

**EXHIBIT 7**

**Schwab Deposition Transcript**

1  
2 IN THE UNITED STATES BANKRUPTCY COURT  
3 FOR THE NORTHERN DISTRICT OF ILLINOIS  
4 EASTERN DIVISION  
5  
6

In re: ) Case No. 15-01145  
7 ) (ABG)  
CAESARS ENTERTAINMENT )  
8 OPERATING COMPANY, INC., ) Chapter 11  
et al., )  
9 )  
Debtors. )

10 ----- )  
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16 DEPOSITION OF BRADLY SCHWAB  
17 New York, New York  
18 Tuesday, January 16, 2018  
19  
20  
21  
22

23 Reported by:  
24 KRISTIN KOCH, RPR, RMR, CRR  
25 JOB NO. 135595A

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4 January 16, 2018</p> <p>5 9:16 a.m.</p> <p>6</p> <p>7</p> <p>8 Deposition of BRADLY SCHWAB, held at</p> <p>9 the offices of Storch Amini P.C., 2 Grand</p> <p>10 Central Tower, 140 East 45th Street, New</p> <p>11 York, New York, before Kristin Koch, a</p> <p>12 Registered Professional Reporter,</p> <p>13 Registered Merit Reporter, Certified</p> <p>14 Realtime Reporter and Notary Public of the</p> <p>15 State of New York.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 APPEARANCES:</p> <p>3</p> <p>4</p> <p>5 STORCH AMINI P.C.</p> <p>6 Attorneys for Earl of Sandwich (Atlantic City)</p> <p>7 LLC</p> <p>8 2 Grand Central Tower</p> <p>9 140 East 45th Street</p> <p>10 New York, New York 10017</p> <p>11 BY: JEFFREY CHUBAK, ESQ.</p> <p>12</p> <p>13</p> <p>14 HERBERT SMITH FREEHILLS NEW YORK LLP</p> <p>15 Attorneys for Bradly Schwab</p> <p>16 450 Lexington Avenue</p> <p>17 New York, New York 10017</p> <p>18 BY: SCOTT S. BALBER, ESQ.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 APPEARANCES: (Continued)</p> <p>3</p> <p>4</p> <p>5 ORRICK, HERRINGTON &amp; SUTCLIFFE LLP</p> <p>6 Attorneys for Whitebox Advisors LLC</p> <p>7 51 West 52nd Street</p> <p>8 New York, New York 10019</p> <p>9 BY: AYANNA LEWIS-GRUSS, ESQ.</p> <p>10</p> <p>11</p> <p>12 ALSO PRESENT:</p> <p>13</p> <p>14 DANNY PHILLIPS, ESQ., Cowen</p> <p>15 JEFFREY C. SIROLLY, ESQ., Earl Enterprises</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1</p> <p>2 BRADLY SCHWAB,</p> <p>3 called as a witness, having been duly sworn</p> <p>4 by a Notary Public, was examined and</p> <p>5 testified as follows:</p> <p>6 EXAMINATION BY</p> <p>7 MR. CHUBAK:</p> <p>8 Q. Mr. Schwab, have you ever been</p> <p>9 deposed before?</p> <p>10 A. Yes.</p> <p>11 Q. Can you tell me on how many</p> <p>12 occasions?</p> <p>13 A. Once.</p> <p>14 Q. Can you describe the litigation in</p> <p>15 which you were deposed?</p> <p>16 A. It was family related.</p> <p>17 Q. Okay. Can you tell me what you did</p> <p>18 to prepare for today's deposition, if anything?</p> <p>19 A. Met with counsel.</p> <p>20 Q. Is that the counsel sitting next to</p> <p>21 you, Scott Balber?</p> <p>22 A. Correct.</p> <p>23 MR. CHUBAK: I am going to hand you</p> <p>24 what I would ask be marked Exhibit 80.</p> <p>25 (Exhibit 80, Bradly Schwab LinkedIn</p>

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<p>1 B. Schwab 2 printout, marked for identification.) 3 Q. Is this a copy of your LinkedIn 4 profile? 5 A. It is. 6 Q. And although the top of the second 7 page is cut off, is it true that you worked at 8 CRT from November 2011 to May 2016? 9 A. Correct. 10 Q. And Debt Acquisition Group before 11 that, and Triax Capital Advisors before that? 12 A. Correct. 13 Q. Is it fair to say that you have been 14 in the trade claim business since at least July 15 2007? 16 A. Give or take, yeah. 17 Q. How did you get into the trade claim 18 business? 19 A. I don't understand the question, 20 like how did I get in. I don't understand. 21 Q. Well, how did you -- what was your 22 first job where your principal responsibility 23 involved the purchase and sale of trade claims? 24 A. Probably Triax or somewhere between 25 Triax and Debt Acquisition Group.</p>	<p>1 B. Schwab 2 Q. And what were your responsibilities 3 at Triax? 4 A. Both as a restructuring advisor, as 5 well as and ultimately eventually buying and 6 selling claims. 7 Q. What were your responsibilities at 8 Debt Acquisition Group? 9 A. Analyzing opportunities to investing 10 in distressed opportunities. 11 Q. Did your responsibilities include 12 the purchase and sale of trade claims? 13 A. Yes. 14 Q. Was that also the case at CRT? 15 A. Correct. 16 Q. And at each of Triax, Debt 17 Acquisition Group and CRT, did you negotiate 18 directly with trade creditors in connection 19 with the purchase and sale of trade claims? 20 A. Yes. 21 Q. And when you entered into -- 22 withdrawn. 23 How did you memorialize agreements 24 with trade creditors with whom you entered into 25 trade claim transactions?</p>
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<p>1 B. Schwab 2 A. Through purchase and sale 3 agreements. 4 Q. Did you memorialize transactions -- 5 withdrawn. 6 (Ms. Lewis-Gruss enters.) 7 Q. Did you memorialize transactions 8 through trade confirmations? 9 A. Can you explain what you mean by 10 "memorialize"? 11 Q. How did you and the trade creditor 12 decide on the terms of an agreement to sell or 13 purchase a trade claim? 14 A. It depended on the situation. 15 Q. Can you elaborate? 16 A. It could be in the form of verbal 17 agreements, it could be the form of e-mails, it 18 could be the form of trade confirmations, it 19 could be a form of actual purchase and sale 20 agreement. It depends on the situation. 21 Q. Had you ever entered into an 22 agreement with a trade creditor on the basis of 23 e-mails while at Triax? 24 A. I don't remember. 25 Q. Had you ever entered into an</p>	<p>1 B. Schwab 2 agreement with a trade creditor on the basis of 3 e-mails while at Debt Acquisition Group? 4 A. No idea. I don't remember. It's a 5 long time ago. 6 Q. Do you remember having 7 entered into-- ever having entered into an 8 agreement with a trade creditor concerning the 9 purchase and sale of a claim on the basis of 10 e-mails while at CRT? 11 A. Do you mean -- what do you mean by 12 "agreement"? 13 Q. A legally-binding agreement 14 concerning the purchase and sale of a 15 bankruptcy claim. 16 MR. BALBER: Object to the form of 17 the question. The witness is not a lawyer 18 and he is not going to opine on legal 19 issues. 20 Q. While at Triax, have you ever 21 entered into an agreement with a trade creditor 22 on the basis of a phone call? 23 A. I don't remember. At Triax? I 24 don't remember. 25 Q. While at Debt Acquisition Group, had</p>

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<p>1 B. Schwab</p> <p>2 you ever entered into an agreement with a trade</p> <p>3 creditor on the basis of a phone call?</p> <p>4 A. I can't remember.</p> <p>5 Q. While at CRT, had you ever entered</p> <p>6 into an agreement concerning the purchase and</p> <p>7 sale of a bankruptcy claim on the basis of a</p> <p>8 phone call?</p> <p>9 A. Yeah. Yes.</p> <p>10 Q. Can you describe that particular</p> <p>11 situation or situations?</p> <p>12 A. I mean, just parties talking to them</p> <p>13 on the phone and people agree to transactions</p> <p>14 and push forward with them.</p> <p>15 Q. What did you do if there was a</p> <p>16 disagreement as to what the parties thought</p> <p>17 they discussed? Withdrawn.</p> <p>18 Were those phone calls recorded?</p> <p>19 A. I have -- I mean, I have no idea. I</p> <p>20 don't know if CRT recorded telephone lines or</p> <p>21 not.</p> <p>22 Q. When you moved to Cowen in May 2016,</p> <p>23 did you move over as the head of the special</p> <p>24 situations group?</p> <p>25 A. Special investments.</p>	<p>1 B. Schwab</p> <p>2 Q. Special investments. How many trade</p> <p>3 claims do you think you -- withdrawn.</p> <p>4 How many trade claims did your group</p> <p>5 enter into during your tenure there?</p> <p>6 A. I don't remember. I don't have any</p> <p>7 of those records.</p> <p>8 Q. Is it fair to say that it's more</p> <p>9 than a hundred?</p> <p>10 A. I don't remember. Maybe. I don't</p> <p>11 know.</p> <p>12 Q. How many trade claims did you</p> <p>13 personally -- withdrawn.</p> <p>14 How many trade claims transactions</p> <p>15 were you personally involved in?</p> <p>16 A. Again --</p> <p>17 Q. Roughly.</p> <p>18 A. Anywhere from one to a hundred, I</p> <p>19 guess, somewhere in there. I don't know.</p> <p>20 Q. Was it more than ten?</p> <p>21 A. Probably. I don't know.</p> <p>22 Q. Was it more than twenty?</p> <p>23 A. I don't know.</p> <p>24 Q. Do you think it was under fifty?</p> <p>25 A. Honestly, I don't know.</p>
Page 12	Page 13
<p>1 B. Schwab</p> <p>2 Q. How were those trade claim</p> <p>3 transactions memorialized?</p> <p>4 A. Any combination of verbal, e-mail,</p> <p>5 trade confirmation or straight to a document.</p> <p>6 Q. Do you remember any specific</p> <p>7 transactions that were memorialized by e-mail?</p> <p>8 A. No.</p> <p>9 Q. Do you remember any specific</p> <p>10 transactions that were memorialized by a phone</p> <p>11 call?</p> <p>12 A. No.</p> <p>13 Q. Is it correct that the transactions</p> <p>14 that you did enter into while at Cowen were</p> <p>15 memorialized by either an Assignment of Claim</p> <p>16 Agreement or a written trade confirmation?</p> <p>17 MR. BALBER: Object to the form of</p> <p>18 the question.</p> <p>19 A. Define "memorialize."</p> <p>20 Q. How did the parties to the</p> <p>21 transaction decide what the transaction's terms</p> <p>22 were?</p> <p>23 MR. BALBER: Which transaction? I</p> <p>24 mean -- object to the form of the question.</p> <p>25 A. To successfully close a transaction</p>	<p>1 B. Schwab</p> <p>2 it will go to a purchase and sale agreement.</p> <p>3 That's how they get done. Every transaction.</p> <p>4 Q. When you agreed to the terms of a</p> <p>5 transaction with a trade claim holder, how did</p> <p>6 you memorialize that transaction's terms prior</p> <p>7 to closing?</p> <p>8 A. It can be verbal, it can be written,</p> <p>9 an e-mail, it could be a trade confirmation, it</p> <p>10 could be a purchase and sale agreement.</p> <p>11 Q. You testified a moment ago that you</p> <p>12 had no specific recollection of any transaction</p> <p>13 being memorialized by e-mail or a phone call</p> <p>14 except perhaps the subject transaction.</p> <p>15 MR. BALBER: Finish your question.</p> <p>16 Q. Is it correct that while at Cowen</p> <p>17 trade claim transactions you entered into were</p> <p>18 memorialized by a written trade confirm or an</p> <p>19 Assignment of Claim Agreement?</p> <p>20 MR. BALBER: Object to the form of</p> <p>21 the question. Mischaracterizes the</p> <p>22 witness' prior testimony.</p> <p>23 You can answer.</p> <p>24 A. I don't remember specifically any of</p> <p>25 the transactions, but that's how they would be</p>

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<p>1 B. Schwab</p> <p>2 done, either verbally, either orally on the</p> <p>3 telephone or written trade confirmation or</p> <p>4 purchase and said agreement.</p> <p>5 Q. For the avoidance of doubt, is it</p> <p>6 correct that you do not recall entering into</p> <p>7 any transaction while at Cowen -- withdrawn.</p> <p>8 Do you recall entering into -- ever</p> <p>9 entering into a claim purchase or sale</p> <p>10 agreement with -- withdrawn.</p> <p>11 While at CRT, do you recall ever</p> <p>12 entering into an agreement with a trade</p> <p>13 creditor on the basis of a phone call?</p> <p>14 A. I would assume I did. I don't</p> <p>15 remember specifically.</p> <p>16 Q. Do you have any specific</p> <p>17 recollection of any transaction entered into on</p> <p>18 the basis of a phone call?</p> <p>19 A. I'd have to think about it. It's a</p> <p>20 long time ago already. I would assume I did</p> <p>21 somewhere, but I don't recall off the top of my</p> <p>22 head any specific transaction.</p> <p>23 Q. While at Cowen, do you recall</p> <p>24 entering into a transaction with a trade</p> <p>25 creditor or -- withdrawn.</p>	<p>1 B. Schwab</p> <p>2 While at Cowen, do you recall</p> <p>3 entering into an agreement concerning the</p> <p>4 purchase and sale of a bankruptcy claim on the</p> <p>5 basis of a phone call?</p> <p>6 A. I'm trying to think. Based on price</p> <p>7 and size and structure? From the -- I guess my</p> <p>8 question being what's entering into an</p> <p>9 agreement, being that an agreement is a signed</p> <p>10 document, purchase and sale agreement?</p> <p>11 Q. Is that how you understood a --</p> <p>12 A. Well, to close a purchase and sale</p> <p>13 agreement of a claim, you need a purchase and</p> <p>14 sale agreement. Eventually that's where you --</p> <p>15 all transactions will go.</p> <p>16 Q. Can an agreement close on the basis</p> <p>17 of another written instrument, such as a trade</p> <p>18 confirmation?</p> <p>19 A. No.</p> <p>20 Q. Did Triax Capital Advisors carry</p> <p>21 claims that it purchased on its books or did</p> <p>22 they -- or did it sell claims to third parties?</p> <p>23 MR. BALBER: Object to the form of</p> <p>24 the question.</p> <p>25 A. It didn't hold it on its books.</p>
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<p>1 B. Schwab</p> <p>2 Q. Did Debt Acquisition Group hold</p> <p>3 claims that it purchased on its books or did it</p> <p>4 sell them to third parties?</p> <p>5 A. Both.</p> <p>6 Q. Is that true for CRT as well?</p> <p>7 A. Yes.</p> <p>8 Q. Is that also true for Cowen Special</p> <p>9 Investments?</p> <p>10 A. Yes.</p> <p>11 Q. How did Triax record claims that it</p> <p>12 understood it had an agreement to purchase on</p> <p>13 its books and records?</p> <p>14 A. I wasn't involved in that.</p> <p>15 Q. How did Debt Acquisition Group</p> <p>16 record the purchase of claims it thought it</p> <p>17 purchased on its books and records?</p> <p>18 A. I wasn't involved in that either.</p> <p>19 Q. Were you involved in that at CRT?</p> <p>20 A. Anecdotally. I wasn't in charge of</p> <p>21 the books and records of the business.</p> <p>22 Q. Did you enter a trade ticket --</p> <p>23 A. Nope.</p> <p>24 Q. -- into a system?</p> <p>25 A. Nope.</p>	<p>1 B. Schwab</p> <p>2 Q. Did you tell anyone when you had</p> <p>3 entered into an agreement to purchase a</p> <p>4 bankruptcy claim?</p> <p>5 A. Purchase from a booking -- books and</p> <p>6 records standpoint a signed purchase and sale</p> <p>7 agreement is executed. It was forwarded to the</p> <p>8 middle and back office and they booked all the</p> <p>9 trades.</p> <p>10 Q. Was that true for Cowen Group as</p> <p>11 well -- for Cowen Special Investments as well?</p> <p>12 MR. BALBER: Object to the form of</p> <p>13 the question.</p> <p>14 A. Yes, but I didn't handle any of that</p> <p>15 at Cowen.</p> <p>16 Q. To the best of your knowledge, did</p> <p>17 Cowen Special Investments ever book a trade as</p> <p>18 being locked in prior to entry of a purchase</p> <p>19 and sale agreement?</p> <p>20 MR. BALBER: Object to the form of</p> <p>21 the question.</p> <p>22 If you understand what that means,</p> <p>23 you can answer it.</p> <p>24 A. Can you repeat it, please.</p> <p>25 Q. To the best of your knowledge, did</p>

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<p>1 B. Schwab</p> <p>2 Cowen ever treat a trade as having been agreed</p> <p>3 to prior to entry of a purchase and sale</p> <p>4 agreement?</p> <p>5 A. Not to my knowledge.</p> <p>6 Q. How many people worked under you at</p> <p>7 Cowen?</p> <p>8 A. Two or three, depending on the time.</p> <p>9 Q. Can you tell me who they were?</p> <p>10 A. John Mori, Gail Rosenblum and Neil</p> <p>11 Desai.</p> <p>12 Q. Can you tell me what their</p> <p>13 respective roles and responsible were?</p> <p>14 A. John Mori was a sourcer slash call</p> <p>15 it assistant trader. Neil was an analyst when</p> <p>16 he was there. He was only there four or five</p> <p>17 months. And Gail Rosenblum was middle office,</p> <p>18 back office, service provider.</p> <p>19 Q. What were Gail's responsibilities</p> <p>20 specifically?</p> <p>21 A. Document close and enter --</p> <p>22 facilitate the internal processes of booking</p> <p>23 and closing trades.</p> <p>24 Q. Did Gail advise Cowen once a</p> <p>25 trade -- a claim trade's terms were agreed to?</p>	<p>1 B. Schwab</p> <p>2 MR. BALBER: Object to the form of</p> <p>3 the question.</p> <p>4 A. I don't know what Gail did.</p> <p>5 Q. Did you advise Cowen when a trade</p> <p>6 claim's agreement terms were agreed to?</p> <p>7 A. So prior -- so I understand from a</p> <p>8 timeline perspective, prior to there being an</p> <p>9 executed purchase and sale agreement?</p> <p>10 Q. Correct.</p> <p>11 A. I guess sometimes. You know, it</p> <p>12 wasn't required.</p> <p>13 Q. How did you advise Cowen on the</p> <p>14 occasions that you did?</p> <p>15 MR. BALBER: Object to the form.</p> <p>16 What do you mean by "advise Cowen"? He is</p> <p>17 Cowen. I don't understand the question.</p> <p>18 MR. CHUBAK: That's fair.</p> <p>19 A. Advise who?</p> <p>20 Q. Did you ever instruct Cowen to</p> <p>21 memorialize the trade on its books and records?</p> <p>22 MR. BALBER: Same objection.</p> <p>23 Q. Prior to entry into an Assignment of</p> <p>24 Claim Agreement?</p> <p>25 A. No.</p>
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<p>1 B. Schwab</p> <p>2 Q. Are you the founding partner of</p> <p>3 Haybeach Partners?</p> <p>4 A. One of three.</p> <p>5 Q. Who are the other two?</p> <p>6 A. Darius Goldman and Neil Desai.</p> <p>7 Q. Has Haybeach purchased any trade</p> <p>8 claims since its launch?</p> <p>9 A. Purchase meaning what? Define.</p> <p>10 Q. Entered into an Assignment of Claim</p> <p>11 Agreement with a creditor in a bankruptcy case.</p> <p>12 A. No.</p> <p>13 Q. Has Haybeach agreed to the terms of</p> <p>14 the purchase of any bankruptcy claim without</p> <p>15 regard to whether it's entered into an</p> <p>16 Assignment of Claim Agreement?</p> <p>17 A. Yes.</p> <p>18 Q. Can you tell me what -- about --</p> <p>19 A. It's confidential.</p> <p>20 Q. Does Haybeach work with Whitebox?</p> <p>21 A. No.</p> <p>22 (Exhibit 81, e-mail dated January</p> <p>23 11, 2017, Bates stamped Confidential</p> <p>24 CSI_00000044 through Confidential</p> <p>25 CSI_00000051, marked for identification.)</p>	<p>1 B. Schwab</p> <p>2 Q. Do you recognize this document as</p> <p>3 your January 11th e-mails with Tom Avallone?</p> <p>4 A. If it's from me, it's from me. I</p> <p>5 guess recognize, I guess, yes.</p> <p>6 Q. I'd like to refer you to the third</p> <p>7 page, specifically the 12:59 p.m. e-mail</p> <p>8 towards the bottom.</p> <p>9 A. Okay.</p> <p>10 Q. Sent from Thomas Avallone to Barrett</p> <p>11 Mikelberg at TriaxAdvisors.com. The page is</p> <p>12 Bates stamped CSI-46.</p> <p>13 Were you forwarded this e-mail by</p> <p>14 Barrett Mikelberg?</p> <p>15 A. If it's in an e-mail chain, I would</p> <p>16 assume so.</p> <p>17 Q. Do you remember having read this</p> <p>18 e-mail, "may be a seller of my \$3.6 million</p> <p>19 undisputed allowed claim for \$2.15 million</p> <p>20 cash"?</p> <p>21 A. I don't remember reading it, but</p> <p>22 it's here, so -- it's a year ago.</p> <p>23 Q. What about the e-mail that followed</p> <p>24 that one, that's on the page Bates stamped</p> <p>25 CSI-45, I'm referring to your e-mail to Thomas</p>

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<p>1 B. Schwab</p> <p>2 Avallone at 1:59 p.m., do you remember having</p> <p>3 sent that e-mail?</p> <p>4 A. No. I assume I did send it, but I</p> <p>5 don't remember sending it.</p> <p>6 Q. Do you remember having received a</p> <p>7 response from Thomas Avallone at 2:04 p.m. that</p> <p>8 says "see below" with the below --</p> <p>9 A. If I have the e-mail in front of me,</p> <p>10 then I have it. I don't remember seeing it, so</p> <p>11 I don't recall.</p> <p>12 Q. I am going to refer you to the</p> <p>13 second to last paragraph of that e-mail, the</p> <p>14 one beginning "moreover, please confirm."</p> <p>15 Do you remember having asked Thomas</p> <p>16 Avallone: "It sounds like you are offering the</p> <p>17 paper for sale at \$2.15 million or</p> <p>18 approximately 59.72% of the face claim amount.</p> <p>19 Is that correct?"</p> <p>20 A. I don't remember writing the e-mail,</p> <p>21 but it's here, so it's my e-mail.</p> <p>22 Q. Do you remember Thomas Avallone</p> <p>23 responding "yes" to that question?</p> <p>24 A. No, I don't remember that.</p> <p>25 Q. I am going to refer you to the</p>	<p>1 B. Schwab</p> <p>2 e-mail that preceded it, the one dated January</p> <p>3 11, 2017, at 2:17 p.m., the text of which</p> <p>4 actually starts on the page Bates stamped</p> <p>5 CSI-45.</p> <p>6 Do you remember having sent this</p> <p>7 e-mail?</p> <p>8 A. I don't remember sending it, but</p> <p>9 it's here, it's mine.</p> <p>10 Q. I am going to refer you to the</p> <p>11 second paragraph of this e-mail, the part that</p> <p>12 begins after the dash: "Do you happen to have</p> <p>13 any support documentation confirming this" --</p> <p>14 this being that Earl Enterprises settled claims</p> <p>15 with the estate -- "either a settlement</p> <p>16 agreement or an allowance</p> <p>17 letter/correspondence."</p> <p>18 Would you characterize that as a</p> <p>19 condition to an agreement?</p> <p>20 A. As due diligence.</p> <p>21 Q. Would you have entered into --</p> <p>22 strike that.</p> <p>23 Would you enter into claim trade</p> <p>24 agreements without regard to whether you know</p> <p>25 whether the claim is allowed?</p>
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<p>1 B. Schwab</p> <p>2 A. Yes.</p> <p>3 MR. BALBER: Object to the form of</p> <p>4 the question.</p> <p>5 Q. Is it fair to describe this as a</p> <p>6 condition to any potential agreement with Earl</p> <p>7 of Sandwich?</p> <p>8 MR. BALBER: Object to the form of</p> <p>9 the question.</p> <p>10 A. It would be due diligence,</p> <p>11 confirmatory.</p> <p>12 Q. What do you mean "confirmatory"?</p> <p>13 A. You would agree to price in notional</p> <p>14 and the transaction would be conditional upon</p> <p>15 confirming that there is a settlement agreement</p> <p>16 in terms of size. It's just -- it would be due</p> <p>17 diligence, it would be confirmatory, not a</p> <p>18 condition to -- it would be a condition to a</p> <p>19 transaction at buyer's discretion confirming</p> <p>20 what it is. It's due diligence.</p> <p>21 Q. So when you wrote: "I would have</p> <p>22 interest at 59.72% subject to confirming the</p> <p>23 above. Please let me know," were you accepting</p> <p>24 what you understood to be a prior offer of</p> <p>25 Tom's subject to your confirming the diligence?</p>	<p>1 B. Schwab</p> <p>2 MR. BALBER: Object to the form of</p> <p>3 the question.</p> <p>4 A. Based on the correspondence. I</p> <p>5 mean, I don't remember specifically, it's a</p> <p>6 year ago, but based on the correspondence,</p> <p>7 correct.</p> <p>8 Q. Was your ability to conduct</p> <p>9 diligence material to any transaction?</p> <p>10 MS. LEWIS-GRUSS: Objection.</p> <p>11 A. I don't understand the question.</p> <p>12 Q. Would you have entered into a</p> <p>13 transaction without the ability to conduct</p> <p>14 diligence?</p> <p>15 A. No.</p> <p>16 Q. I am going to refer you to Thomas</p> <p>17 Avallone's 2:38 p.m. e-mail to you of the same</p> <p>18 day towards the bottom of the page Bates</p> <p>19 stamped CSI-44, the e-mail in which he says:</p> <p>20 "I can easily get a letter from the</p> <p>21 Debtor/Restructuring Officer confirming nature</p> <p>22 of the claim amount as undisputed and allowed</p> <p>23 if we decide to move forward."</p> <p>24 Do you recall having received this</p> <p>25 e-mail?</p>



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<p>1 B. Schwab</p> <p>2 A. No, I don't recall.</p> <p>3 Q. What do you understand Tom to have</p> <p>4 meant when he wrote "if we decide to move</p> <p>5 forward"?</p> <p>6 A. I don't -- I can't refer to that. I</p> <p>7 don't remember what I was thinking at the point</p> <p>8 in time.</p> <p>9 Q. I am going to refer you to the</p> <p>10 3:47 p.m. e-mail of the same day, the one that</p> <p>11 is at the top of the same page, specifically</p> <p>12 the part where you wrote: "I would be a buyer</p> <p>13 of your \$3.6 million allowed CZR claim at \$2.15</p> <p>14 million of 59.72% of the allowed face amount</p> <p>15 subject to (a)," (b), (c), (d).</p> <p>16 Do you recall having sent this</p> <p>17 e-mail?</p> <p>18 A. No.</p> <p>19 Q. Did you -- sitting here now and</p> <p>20 reading this e-mail, do you understand it to be</p> <p>21 an offer subject to conditions?</p> <p>22 A. It would be a bid subject to</p> <p>23 conditions.</p> <p>24 Q. What's the difference between a bid</p> <p>25 and an offer?</p>	<p>1 B. Schwab</p> <p>2 A. Bid is my -- me showing you what I</p> <p>3 would pay for something. Offering is what he</p> <p>4 would do to me.</p> <p>5 Q. Were you looking to Thomas to accept</p> <p>6 your bid?</p> <p>7 A. No, I mean, reading through the</p> <p>8 correspondence, it would be he offered the</p> <p>9 paper at -- looking through it now, it would be</p> <p>10 considered he offered the paper at</p> <p>11 59.72 percent earlier in the earlier e-mails.</p> <p>12 Q. Did you ever accept Thomas' prior</p> <p>13 offer?</p> <p>14 A. Well, that's what the top e-mail is.</p> <p>15 Q. If that's the case, why did you ask</p> <p>16 Thomas to "please confirm that you are good</p> <p>17 with the above terms"?</p> <p>18 A. Just verbiage. They were his terms</p> <p>19 from the earlier e-mail.</p> <p>20 Q. Is it your position that by sending</p> <p>21 this e-mail you accepted Thomas' prior offer?</p> <p>22 A. In terms of moving a transaction</p> <p>23 forward, in my experience in most instances</p> <p>24 that would facilitate the conversation to move</p> <p>25 a transaction forward, correct.</p>
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<p>1 B. Schwab</p> <p>2 Q. But this was just a bid? Withdrawn.</p> <p>3 What do you mean by move the</p> <p>4 transaction forward?</p> <p>5 A. I mean it would go from an e-mail,</p> <p>6 as I said, it could be verbal, it could be</p> <p>7 e-mail, it could go to a trade confirmation, it</p> <p>8 could go to a purchase and sale agreement.</p> <p>9 Eventually it would have to get to a purchase</p> <p>10 and sale agreement. This isn't a</p> <p>11 transaction -- it's a transaction subject to</p> <p>12 negotiating the final terms and conditions of a</p> <p>13 transaction.</p> <p>14 Q. Did Thomas ever agree to any of the</p> <p>15 conditions set forth in this e-mail?</p> <p>16 A. I don't -- I mean, that's the only</p> <p>17 e-mails I have sitting in front of me. I don't</p> <p>18 have any other e-mail after this one, so...</p> <p>19 Q. Were these conditions material to</p> <p>20 any deal you would have made with Earl of</p> <p>21 Sandwich?</p> <p>22 MR. BALBER: Object to the form of</p> <p>23 the question.</p> <p>24 A. I don't understand the question.</p> <p>25 Q. Would you have entered into an</p>	<p>1 B. Schwab</p> <p>2 agreement concerning the purchase and sale of</p> <p>3 the claim without these conditions attached?</p> <p>4 A. Which conditions?</p> <p>5 Q. The ones identified in (a), (b), (c)</p> <p>6 and (d) of this e-mail.</p> <p>7 A. They would all be addressed in the</p> <p>8 documentation process.</p> <p>9 Q. Would -- did you negotiate -- I'm</p> <p>10 sorry. Withdrawn.</p> <p>11 Would you ever negotiate the terms</p> <p>12 of a purchase and sale agreement?</p> <p>13 A. Yes.</p> <p>14 Q. Is that true for transactions in</p> <p>15 which the claim was not held by Cowen, but</p> <p>16 instead sold to a third party?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall ever having waived the</p> <p>19 conditions set forth in your 3:47 p.m. e-mail?</p> <p>20 A. In general or in specific to this?</p> <p>21 Q. Specific to this.</p> <p>22 A. I wasn't involved in anything post</p> <p>23 the e-mail correspondence. So I was not</p> <p>24 involved in any of that process at Cowen in</p> <p>25 this specific instance.</p>

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Q. The following paragraph reads:  
"Please confirm that you are good with the above terms and I will forward you a purchase and sale agreement for review."

Do you recall Tom ever having confirmed that he was good with the above terms?

A. Based on the e-mail sitting in front of me, no, I don't remember.

(Exhibit 82, e-mail dated January 12, 2017, Bates stamped Confidential CSI\_00000103 through Confidential CSI\_00000111, marked for identification.)

Q. I have asked that this document be marked Exhibit 82.

Do you recognize this as your correspondence from the following day or the morning of the following day specifically?

A. If it says me and it's my e-mails, I guess yeah, but I don't remember other than seeing the document.

Q. Do you recall having sent the e-mail -- I'm sorry -- the 8:34 a.m. e-mail at the bottom of the first page of this exhibit?

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A. I don't remember sending any of the e-mails. I just -- I have the correspondence in front of me. It's a year ago.

Q. I am going to refer you to the first sentence of the e-mail. "Thomas -- as a follow-up to my below email" -- that's a reference to the 3:47 e-mail we just discussed -- "and our quick conversation."

Do you recall when that conversation took place?

A. I don't. All I know is we had one. I don't remember the specifics regarding it or --

Q. Do you know what -- I'm sorry.

A. I don't know when it took place or what it consisted of, but there was a conversation.

Q. Do you know if Cowen Special Investments records its phone calls?

A. I don't. I don't think it does, but I don't.

Q. I am going to refer you to the following phrase in that -- clause in that same sentence: "My acceptance of your offer is good

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through 11am eastern time, January 12th."

Which offer were you referring to when you said "my acceptance of your offer"?

A. His original -- I guess I was referring to his original at 59.72 percent of the 2.15 million.

Q. Was "my acceptance" -- withdrawn.

When you wrote "my acceptance of your offer is good through 11am eastern time today," was that a condition to any -- to entering into any transaction with Earl of Sandwich?

A. I don't know if it's a condition or an expiration.

Q. Would that be an expiration of your bid?

A. It could be interpreted that way.

Q. And what did you expect Mr. Avallone to do to prevent the bid from expiring?

A. I don't know if I expected anything other than either he would -- we would get somewhere and push forward or we wouldn't push forward.

Q. I am going to refer you to the next

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paragraph, the second sentence in particular, the one which begins "if this is a transaction Planet Hollywood would like to pursue."

A. Uh-huh.

Q. Is it correct that you understood at that point in time that you did not have an agreement concerning the terms of a purchase and sale agreement with Earl of Sandwich?

MR. BALBER: Object to the form of the question.

A. As I said, I don't remember specifically at that point in time. All I can refer to is what's written in front of me.

Q. Is it fair to say that you wouldn't have said "if this is a transaction Planet Hollywood would like to pursue" if you understood you had a deal at that point in time?

MR. BALBER: Object to the form of the question.

A. It's just words. I mean, I think there is a transaction based on 59.72 percent of 2.15 million.

Q. Based on the e-mails that we have

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<p>1 B. Schwab</p> <p>2 reviewed so far, did you understand Cowen to</p> <p>3 have had an agreement with Earl of Sandwich</p> <p>4 concerning the purchase and sale of the</p> <p>5 bankruptcy claim?</p> <p>6 A. Can you define "agreement"?</p> <p>7 Q. A mutual understanding concerning</p> <p>8 the purchase and sale of the bankruptcy claim</p> <p>9 whose terms were defined -- under defined</p> <p>10 terms.</p> <p>11 A. I would say an understanding to</p> <p>12 employ best efforts to move forward to see if</p> <p>13 you could get to a document that's mutually</p> <p>14 acceptable.</p> <p>15 Q. Is that based solely on Thomas'</p> <p>16 2:04 p.m. e-mail on the third page of the -- of</p> <p>17 Exhibit 81?</p> <p>18 MR. BALBER: Object to the form of</p> <p>19 the question.</p> <p>20 A. I guess it is. I mean, if you are</p> <p>21 just referring to an e-mail, I guess.</p> <p>22 Q. Do you remember having spoken with</p> <p>23 Thomas Avallone?</p> <p>24 A. I remember speaking -- I know there</p> <p>25 was a conversation. I don't remember the</p>	<p>1 B. Schwab</p> <p>2 contents of the conversation.</p> <p>3 Q. I am going to refer you to the</p> <p>4 9:47 a.m. e-mail that precedes it on the same</p> <p>5 page in which Thomas Avallone writes to you:</p> <p>6 "Please forward draft document."</p> <p>7 Do you remember having received this</p> <p>8 e-mail?</p> <p>9 A. I don't recall receiving it, but</p> <p>10 it's here.</p> <p>11 Q. Sitting here today, what did you</p> <p>12 understand this response to mean?</p> <p>13 A. That there is an understanding to</p> <p>14 push forward all subject to figuring out a</p> <p>15 purchase and sale agreement, which is subject</p> <p>16 to negotiation based on the terms and</p> <p>17 conditions that were listed earlier.</p> <p>18 Q. Is it possible that Tom was</p> <p>19 responding to your e-mail -- to the second</p> <p>20 paragraph of your 3:47 p.m. e-mail "please</p> <p>21 confirm that you are good with the above terms</p> <p>22 and I will forward you a purchase and sale</p> <p>23 agreement for review"?</p> <p>24 MR. BALBER: Object to the form of</p> <p>25 the question.</p>
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<p>1 B. Schwab</p> <p>2 A. You would have to ask him. You</p> <p>3 would have to ask Tom.</p> <p>4 Q. Did you understand Thomas Avallone's</p> <p>5 e-mail "please forward draft document" to be an</p> <p>6 acceptance of your bid?</p> <p>7 A. I don't remember, but in convention</p> <p>8 that would be yes, that people would request</p> <p>9 copies of draft documents to review to push</p> <p>10 forward with a transaction.</p> <p>11 Q. In your experience, has a potential</p> <p>12 counterparty or counterparty ever accepted a</p> <p>13 bid by asking for a draft document?</p> <p>14 A. Yes.</p> <p>15 Q. In your experience, has a potential</p> <p>16 counterparty ever accepted a bid -- withdrawn.</p> <p>17 Where was Gail working at this time?</p> <p>18 A. Physically?</p> <p>19 Q. Physically.</p> <p>20 A. In -- in relation to where I was</p> <p>21 sitting?</p> <p>22 Q. Yes.</p> <p>23 A. In a cube outside my office.</p> <p>24 Q. There was no time zone difference</p> <p>25 between you guys?</p>	<p>1 B. Schwab</p> <p>2 A. No. Not that I know. And this is</p> <p>3 Thursday. No, I don't believe there is.</p> <p>4 Q. You testified earlier that Cowen</p> <p>5 Special Investments did not record bankruptcy</p> <p>6 claim trades absent the existence of an</p> <p>7 Assignment of Claim Agreement; is that correct?</p> <p>8 MR. BALBER: Objection.</p> <p>9 Mischaracterizes the witness' prior</p> <p>10 testimony.</p> <p>11 You can answer.</p> <p>12 A. We did not put anything on the books</p> <p>13 and records until there were signed purchase</p> <p>14 and sale agreements.</p> <p>15 Q. On January 12 did you instruct --</p> <p>16 withdrawn.</p> <p>17 Following this e-mail exchange, did</p> <p>18 you do anything to ensure that this claim trade</p> <p>19 was reflected on Cowen's books and records?</p> <p>20 A. After the correspondence I had I</p> <p>21 wasn't involved in the transaction ever again.</p> <p>22 Q. Do you know who was involved?</p> <p>23 A. I would -- I mean, from the</p> <p>24 standpoint of Gail was managing the process and</p> <p>25 then it went from there.</p>

<p style="text-align: right;">Page 38</p> <p>1 B. Schwab</p> <p>2 Q. Do you know if Gail did anything to</p> <p>3 ensure that the trade was reflected on the</p> <p>4 books and records of Cowen Special Investments?</p> <p>5 A. Not that I'm aware of, just because</p> <p>6 you wouldn't put it on the books and records</p> <p>7 unless there is an executed purchase and sale</p> <p>8 agreement.</p> <p>9 Q. Did Thomas ever tell you that any</p> <p>10 transaction with Earl would be subject to the</p> <p>11 approval of Robert Earl?</p> <p>12 A. I don't remember. I only know there</p> <p>13 was a conversation which I don't remember the</p> <p>14 contents of.</p> <p>15 Q. Did Thomas ever advise you that he</p> <p>16 was a member of the Official Committee of</p> <p>17 Unsecured Creditors in the Caesars Chapter 11</p> <p>18 cases?</p> <p>19 A. I don't remember.</p> <p>20 (Exhibit 83, e-mail dated January</p> <p>21 12, 2017, Bates stamped Confidential</p> <p>22 CSI_00000112 through Confidential</p> <p>23 CSI_00000122, marked for identification.)</p> <p>24 Q. Do you recognize this document? I</p> <p>25 am referring to the first page only.</p>	<p style="text-align: right;">Page 39</p> <p>1 B. Schwab</p> <p>2 A. No, not that I -- I'm not party to</p> <p>3 it, so...</p> <p>4 Q. Do you understand that Whitebox has</p> <p>5 taken the position in this litigation that this</p> <p>6 is the instrument pursuant to which the Earl of</p> <p>7 Sandwich claim was conveyed to Whitebox?</p> <p>8 MR. BALBER: Maybe you should ask</p> <p>9 him a foundational question like does he</p> <p>10 have any idea what this litigation is</p> <p>11 about. I mean, that's kind of a pretty</p> <p>12 specific premise you are putting on a</p> <p>13 non-party witness. So object to the form</p> <p>14 of the question. No foundation.</p> <p>15 A. It would be a trade confirmation via</p> <p>16 e-mail.</p> <p>17 Q. Was it Gail's practice to not copy</p> <p>18 you on trade confirmations sent in connection</p> <p>19 with bankruptcy claim transactions?</p> <p>20 A. It depended.</p> <p>21 Q. Did you or Gail ever discuss the</p> <p>22 trade confirmation concerning the Earl claim</p> <p>23 between Cowen Special Investments and Whitebox</p> <p>24 Advisors?</p> <p>25 A. I don't remember.</p>
<p style="text-align: right;">Page 40</p> <p>1 B. Schwab</p> <p>2 MR. CHUBAK: Can we take a break.</p> <p>3 (Recess was taken from 10:09 to</p> <p>4 10:16.)</p> <p>5 MS. LEWIS-GRUSS: Whitebox joins in</p> <p>6 any objections made to the questions posed</p> <p>7 during today's deposition, specifically the</p> <p>8 questions asked by Mr. Chubak on behalf of</p> <p>9 his client, Earl of Sandwich of Atlantic</p> <p>10 City.</p> <p>11 BY MR. CHUBAK:</p> <p>12 Q. Do you remember ever seeing a copy</p> <p>13 of Exhibit 83 prior to today?</p> <p>14 A. I don't recall ever seeing it.</p> <p>15 (Exhibit 84, e-mail dated January</p> <p>16 12, 2017, Bates stamped Confidential</p> <p>17 CSI_00000214 through Confidential</p> <p>18 CSI_00000224, marked for identification.)</p> <p>19 Q. Do you recall having received this</p> <p>20 e-mail?</p> <p>21 A. I don't remember receiving it, but</p> <p>22 it's here, so...</p> <p>23 Q. This is an e-mail from Gail</p> <p>24 Rosenblum to Thomas Avallone dated January 12,</p> <p>25 2017 at 1:24 p.m. At the bottom she asks</p>	<p style="text-align: right;">Page 41</p> <p>1 B. Schwab</p> <p>2 Mr. Avallone that "we" -- I'm sorry.</p> <p>3 Withdrawn.</p> <p>4 At the bottom of this e-mail Gail</p> <p>5 Rosenblum states that "we would be happy to</p> <p>6 answer any questions you may have."</p> <p>7 Standing here today, sitting here</p> <p>8 today, do you understand that "we" to be a</p> <p>9 reference to you and her?</p> <p>10 A. No, "we" would be a reference to</p> <p>11 Cowen.</p> <p>12 Q. Do you recall ever having spoken to</p> <p>13 Thomas Avallone following receipt of this</p> <p>14 e-mail?</p> <p>15 A. Not that I remember, no.</p> <p>16 MR. CHUBAK: I'd like to mark this</p> <p>17 as 85.</p> <p>18 (Exhibit 85, e-mail dated January</p> <p>19 12, 2017, Bates stamped Confidential</p> <p>20 CSI_00000242 through Confidential</p> <p>21 CSI_00000253, marked for identification.)</p> <p>22 Q. Do you recall ever having seen this</p> <p>23 e-mail?</p> <p>24 A. No, I don't.</p> <p>25 Q. And by "this e-mail" I am referring</p>

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<p>1 B. Schwab</p> <p>2 to the top e-mail on the first page of this</p> <p>3 exhibit.</p> <p>4 A. No.</p> <p>5 Q. The second sentence of this e-mail</p> <p>6 reads: "Brad and I are available" -- and this</p> <p>7 e-mail being one sent by Gail Rosenblum to</p> <p>8 Thomas Avallone copying you. It reads: "Brad</p> <p>9 and I are available by phone and email to</p> <p>10 discuss the claim and process."</p> <p>11 Do you recall having spoken to</p> <p>12 Thomas Avallone by phone or communicating with</p> <p>13 him by e-mail later that day?</p> <p>14 A. I don't remember.</p> <p>15 Q. Do you remember having spoken to</p> <p>16 Thomas Avallone by phone or communicating with</p> <p>17 him by e-mail following January 12, 2017?</p> <p>18 A. I don't believe I spoke to him</p> <p>19 ever -- no, I don't think there was any</p> <p>20 communication, to the best of my knowledge. I</p> <p>21 don't remember.</p> <p>22 MR. CHUBAK: Can you mark this 86.</p> <p>23 (Exhibit 86, e-mail dated January</p> <p>24 16, 2017, Bates stamped Confidential</p> <p>25 CSI_00000304 through Confidential</p>	<p>1 B. Schwab</p> <p>2 CSI_00000316, marked for identification.)</p> <p>3 Q. Do you recall ever having received</p> <p>4 this e-mail?</p> <p>5 A. I don't.</p> <p>6 Q. And by "this e-mail" I am referring</p> <p>7 to the top e-mail on -- of the first page of</p> <p>8 this exhibit.</p> <p>9 A. No, I don't recall directly, no.</p> <p>10 Q. The first sentence of this e-mail</p> <p>11 states: "I wanted to follow up to our call</p> <p>12 late Friday."</p> <p>13 Do you recall having -- ever having</p> <p>14 been on a phone call with Thomas Avallone on</p> <p>15 the referenced Friday?</p> <p>16 A. I do not.</p> <p>17 MR. CHUBAK: Can you mark this 87.</p> <p>18 (Exhibit 87, e-mail dated January</p> <p>19 17, 2017, Bates stamped Confidential</p> <p>20 CSI_00000344 through Confidential</p> <p>21 CSI_00000356, marked for identification.)</p> <p>22 Q. Do you recall ever having seen this</p> <p>23 e-mail? And by "this e-mail" I am specifically</p> <p>24 referring to the top e-mail on the page Bates</p> <p>25 stamped CSI underscore 344.</p>
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<p>1 B. Schwab</p> <p>2 A. I don't remember receiving it, no.</p> <p>3 I am just CC'd on it, so...</p> <p>4 Q. I am going to refer you to the first</p> <p>5 sentence of the e-mail: "I wanted to follow up</p> <p>6 to the message I left with Laurie this</p> <p>7 afternoon."</p> <p>8 Did you -- do you recall having</p> <p>9 heard -- strike that.</p> <p>10 Do you have knowledge of what</p> <p>11 message Gail left with Laurie that afternoon?</p> <p>12 A. No.</p> <p>13 MR. CHUBAK: Can you mark this as</p> <p>14 88.</p> <p>15 (Exhibit 88, e-mail dated January</p> <p>16 18, 2017, Bates stamped Confidential</p> <p>17 CSI_00000398 through Confidential</p> <p>18 CSI_00000400, marked for identification.)</p> <p>19 Q. I am going to refer you -- I'm</p> <p>20 sorry.</p> <p>21 Do you recall ever having seen this</p> <p>22 e-mail?</p> <p>23 A. I don't.</p> <p>24 Q. I am going to refer you to the</p> <p>25 second sentence of this e-mail beginning "there</p>	<p>1 B. Schwab</p> <p>2 has been no response from Thomas" in which Gail</p> <p>3 writes: "I can send one more email and write</p> <p>4 we have allocated funds for this transaction."</p> <p>5 Is it true that Cowen Special</p> <p>6 Investments allocated funds for a potential</p> <p>7 transaction with Earl of Sandwich?</p> <p>8 MS. LEWIS-GRUSS: Objection.</p> <p>9 A. I don't -- you would have to ask</p> <p>10 her. I don't -- I don't know what they did. I</p> <p>11 mean, there is a balance sheet available at the</p> <p>12 firm, so I don't -- I don't know what they did.</p> <p>13 She wrote the e-mail. I didn't.</p> <p>14 Q. Is it your testimony today that as</p> <p>15 head of Cowen Special Investments you did not</p> <p>16 know whether Cowen Special Investments had</p> <p>17 allocated funds for bankruptcy claim purchases?</p> <p>18 MR. BALBER: Object to the form of</p> <p>19 the question. Is it your testimony</p> <p>20 yesterday or tomorrow too or just today?</p> <p>21 Go ahead. I'm joking.</p> <p>22 A. In general or in this specific case?</p> <p>23 I don't understand the question.</p> <p>24 Q. Is it your testimony today that</p> <p>25 Cowen Special Investments had allocated</p>

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<p>1 B. Schwab</p> <p>2 funds --</p> <p>3 A. I don't -- I don't believe -- I</p> <p>4 don't know.</p> <p>5 Q. I am going to refer you to the last</p> <p>6 phrase in that same sentence: "I can send one</p> <p>7 more email and write" -- "and ask him to</p> <p>8 confirm that he intends/does not intend to</p> <p>9 proceed, although it seems obvious."</p> <p>10 Do you recall having received that</p> <p>11 message from Gail?</p> <p>12 A. As I said, I don't recall ever</p> <p>13 seeing the e-mail, so -- I would assume I did</p> <p>14 receive it. This is a year ago. I don't</p> <p>15 remember.</p> <p>16 Q. What do you think Gail meant when</p> <p>17 she said it seemed obvious?</p> <p>18 A. Again, I don't -- I mean, at the</p> <p>19 point in time or just reading through the</p> <p>20 correspondence now? I don't understand the</p> <p>21 question.</p> <p>22 Q. What do you think Gail meant sitting</p> <p>23 here today?</p> <p>24 MR. BALBER: Object to the form of</p> <p>25 the question. I don't think Gail is here</p>	<p>1 B. Schwab</p> <p>2 today.</p> <p>3 A. That she had not heard back.</p> <p>4 MR. CHUBAK: Mark this 89.</p> <p>5 (Exhibit 89, e-mail dated January</p> <p>6 18, 2017, Bates stamped Confidential</p> <p>7 CSI_00000401 through Confidential</p> <p>8 CSI_00000403, marked for identification.)</p> <p>9 Q. Do you recall having sent the e-mail</p> <p>10 at the top of the first page of this exhibit,</p> <p>11 Bates stamped CSI underscore 401?</p> <p>12 A. I do not.</p> <p>13 Q. You testified earlier today that you</p> <p>14 understood there to have been an agreement</p> <p>15 based on your acceptance of Thomas' prior bid;</p> <p>16 is that correct?</p> <p>17 A. An understanding to move forward and</p> <p>18 explore the possibility subject to getting to a</p> <p>19 final transaction document, purchase and sale</p> <p>20 agreement.</p> <p>21 Q. If that's correct, can you tell me</p> <p>22 why you said in the third paragraph of this</p> <p>23 e-mail that the seller had disappeared and</p> <p>24 there is most likely no transaction?</p> <p>25 A. You can't close a transaction with</p>
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<p>1 B. Schwab</p> <p>2 someone who doesn't communicate back with you.</p> <p>3 Q. Was the transaction referenced in</p> <p>4 that sentence ever documented?</p> <p>5 MR. BALBER: Object to the form of</p> <p>6 the question.</p> <p>7 A. Define "documented."</p> <p>8 Q. Reduced to paper.</p> <p>9 A. In what capacity? E-mail, verbal,</p> <p>10 purchase and sale agreement, trade confirm? I</p> <p>11 mean, in what capacity? I don't understand the</p> <p>12 question.</p> <p>13 Q. Was this transaction ever documented</p> <p>14 by a signed purchase and sale agreement?</p> <p>15 A. Between Earl of Sandwich and Cowen?</p> <p>16 Q. Correct.</p> <p>17 A. No.</p> <p>18 Q. Was it ever documented by a written</p> <p>19 trade confirmation?</p> <p>20 A. An executable trade confirmation?</p> <p>21 No. Not that I'm aware of, no.</p> <p>22 Q. Do you believe that any transaction</p> <p>23 between Cowen Special Investments and Earl of</p> <p>24 Sandwich (Atlantic City) LLC was documented at</p> <p>25 all?</p>	<p>1 B. Schwab</p> <p>2 A. Again, "transaction" meaning what?</p> <p>3 Like there was a closed trade?</p> <p>4 Q. No.</p> <p>5 A. You need a purchase and sale</p> <p>6 agreement to have a closed transaction, so...</p> <p>7 Q. Do you believe that an agreement</p> <p>8 concerning the potential sale of Earl of</p> <p>9 Sandwich's Caesars claim was ever documented?</p> <p>10 MS. LEWIS-GRUSS: Objection.</p> <p>11 MR. BALBER: You can answer.</p> <p>12 A. Based on the e-mail correspondence</p> <p>13 an understanding to move forward and, you know,</p> <p>14 use a best efforts basis to get to a</p> <p>15 transaction document.</p> <p>16 Q. You testified earlier that you don't</p> <p>17 recall having spoke -- the substance of any</p> <p>18 conversation you may have had with Thomas</p> <p>19 Avallone.</p> <p>20 Is it your testimony today that any</p> <p>21 agreement between Cowen Special Investments and</p> <p>22 Earl of Sandwich (Atlantic City) LLC was</p> <p>23 documented solely by e-mails exchanged between</p> <p>24 you and Mr. Avallone?</p> <p>25 A. Again, the question being a closed</p>

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<p>1 B. Schwab</p> <p>2 transaction? No. An understanding to push</p> <p>3 forward with the transaction, I believe there</p> <p>4 was.</p> <p>5 Q. When you say "understanding," do you</p> <p>6 mean negotiations over the terms of the</p> <p>7 potential bankruptcy claim trade?</p> <p>8 MR. BALBER: Object to the form of</p> <p>9 the question.</p> <p>10 A. "Terms" is vague, right? Terms can</p> <p>11 be many things in a transaction. What terms?</p> <p>12 Q. If you believed you had an</p> <p>13 understanding to push forward with the</p> <p>14 transaction, why were you asking Thomas to</p> <p>15 agree -- withdrawn.</p> <p>16 What would have been the material</p> <p>17 terms of a transaction you entered into with</p> <p>18 Earl of Sandwich?</p> <p>19 MR. BALBER: Object to the form of</p> <p>20 the question.</p> <p>21 A. I'd have to look at the specifics to</p> <p>22 the claim itself, but eventually we would get</p> <p>23 to a signed purchase and sale agreement which</p> <p>24 would be inclusive of all -- addressing any and</p> <p>25 all terms and conditions. Right? It's a</p>	<p>1 B. Schwab</p> <p>2 twelve-page document.</p> <p>3 Q. Did Cowen Special Investments --</p> <p>4 withdrawn.</p> <p>5 Would you have required an indemnity</p> <p>6 under any such agreement?</p> <p>7 A. I don't know.</p> <p>8 Q. Would any such agreement have</p> <p>9 included representations and warranties?</p> <p>10 A. Yes.</p> <p>11 Q. Would any such agreement include a</p> <p>12 Power of Attorney provision?</p> <p>13 A. It depends.</p> <p>14 Q. Can you tell me what it depends on?</p> <p>15 MR. BALBER: Object to the form of</p> <p>16 the question.</p> <p>17 A. It's totally transaction specific.</p> <p>18 There is no standard document. Every</p> <p>19 transaction is different.</p> <p>20 Q. Would any transaction with Earl of</p> <p>21 Sandwich (Atlantic City) LLC have required an</p> <p>22 indemnity provision?</p> <p>23 A. I don't know. I don't know.</p> <p>24 Q. Would you have required that Earl of</p> <p>25 Sandwich (Atlantic City) LLC make</p>
Page 52	Page 53
<p>1 B. Schwab</p> <p>2 representations and warranties in connection</p> <p>3 with a potential transaction concerning the</p> <p>4 sale of its bankruptcy claim in Caesars?</p> <p>5 A. Possibly. I don't know.</p> <p>6 Q. Would you have required that Earl of</p> <p>7 Sandwich (Atlantic City) LLC give Cowen Special</p> <p>8 Investments a Power of Attorney or limited</p> <p>9 Power of Attorney under any --</p> <p>10 A. Quite possibly. I don't know.</p> <p>11 Q. Had you discussed any of an</p> <p>12 indemnity, representations and warranties or</p> <p>13 Power of Attorney with Earl of Sandwich</p> <p>14 Atlantic City?</p> <p>15 A. I never spoke -- I don't recall ever</p> <p>16 speaking with Earl of Sandwich about any</p> <p>17 agreement, so the answer --</p> <p>18 Q. Do you recall ever having spoken</p> <p>19 with Thomas Avallone about an indemnity or</p> <p>20 representations or warranties --</p> <p>21 A. I do not.</p> <p>22 (Exhibit 90, e-mail dated January</p> <p>23 18, 2017, Bates stamped Confidential</p> <p>24 CSI_00000424 through Confidential</p> <p>25 CSI_00000427, marked for identification.)</p>	<p>1 B. Schwab</p> <p>2 Q. I am going to refer you to the top</p> <p>3 two e-mails on the page stamped CSI underscore</p> <p>4 424.</p> <p>5 Do you recall having sent the e-mail</p> <p>6 time stamped 7:51 a.m.?</p> <p>7 A. I do not.</p> <p>8 Q. With respect to Gail's e-mail time</p> <p>9 stamped 7:58 a.m., what do you think she meant</p> <p>10 when she said that she made every effort but</p> <p>11 doubts that he was ever a serious seller?</p> <p>12 A. You would have to ask her. I don't</p> <p>13 know what she meant, I mean, other than she</p> <p>14 tried her best to get in touch with him.</p> <p>15 (Exhibit 91, e-mail dated February</p> <p>16 7, 2017, Bates stamped Confidential</p> <p>17 CSI_00000531 through Confidential</p> <p>18 CSI_00000536, marked for identification.)</p> <p>19 Q. I am going to refer you to the top</p> <p>20 two e-mails on the page stamped CSI underscore</p> <p>21 531. What do you think -- let me start --</p> <p>22 withdrawn.</p> <p>23 Who is Jillian Bottge?</p> <p>24 A. She is a salesperson who covers</p> <p>25 Whitebox.</p>

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<p>1 B. Schwab</p> <p>2 Q. When you say "covers Whitebox," what</p> <p>3 do you mean by that?</p> <p>4 A. She is their account representative</p> <p>5 at Cowen.</p> <p>6 Q. What do you think she meant when she</p> <p>7 wrote "Whitebox wondering if we have given earl</p> <p>8 notice"?</p> <p>9 MR. BALBER: Object to the form of</p> <p>10 the question.</p> <p>11 A. You would have to ask -- I don't</p> <p>12 know. You would have to ask her.</p> <p>13 Q. Whitebox has testified that when it</p> <p>14 received the written confirm from Gail on</p> <p>15 January 12th, 2017, that it was confident that</p> <p>16 Cowen Special Investments had entered into a</p> <p>17 mirror confirm with Earl of Sandwich (Atlantic</p> <p>18 City) LLC.</p> <p>19 Was it Cowen Special Investments'</p> <p>20 practice or your practice to enter into a</p> <p>21 mirror confirm with a bankruptcy claim seller</p> <p>22 prior to entering into a confirm with Whitebox?</p> <p>23 MS. LEWIS-GRUSS: Objection.</p> <p>24 MR. BALBER: Object to the form of</p> <p>25 the question.</p>	<p>1 B. Schwab</p> <p>2 MS. LEWIS-GRUSS: Misstates</p> <p>3 Whitebox's testimony.</p> <p>4 A. Can you repeat the question.</p> <p>5 Q. Whitebox testified that when it</p> <p>6 received the written confirm from Gail on</p> <p>7 January 12, 2017, that it was confident Cowen</p> <p>8 Special Investments had entered into a mirror</p> <p>9 trade confirmation with Earl of Sandwich</p> <p>10 (Atlantic City) LLC.</p> <p>11 Was it your practice to enter into a</p> <p>12 trade confirm with a bankruptcy claim seller</p> <p>13 prior to sending a trade confirmation to</p> <p>14 Whitebox?</p> <p>15 MR. BALBER: Object to the form of</p> <p>16 the question.</p> <p>17 MS. LEWIS-GRUSS: Same objection.</p> <p>18 A. In general -- I don't understand --</p> <p>19 Q. In general.</p> <p>20 A. In general that -- I wasn't involved</p> <p>21 in any of the correspondence with Whitebox, so</p> <p>22 I can't attest to anything that was done with</p> <p>23 Whitebox. I wasn't involved in any of the</p> <p>24 conversations or correspondence.</p> <p>25 Q. Have you ever sent or been copied on</p>
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<p>1 B. Schwab</p> <p>2 trade confirmations sent from Cowen Special</p> <p>3 Investments to Whitebox?</p> <p>4 A. Not that I recall, unless -- I don't</p> <p>5 believe so, no.</p> <p>6 Q. Do you recall ever having entered</p> <p>7 into a written trade confirmation with a</p> <p>8 bankruptcy claim seller while as head of Cowen</p> <p>9 Special Investments LLC?</p> <p>10 A. Meaning did I negotiate or I entered</p> <p>11 into? Because I don't enter into any</p> <p>12 agreements at Cowen Special Investments. I am</p> <p>13 not a signatory when I was there.</p> <p>14 Q. Which persons are signatories at</p> <p>15 Cowen Special Investments?</p> <p>16 A. Brian Seyfried and, I don't know,</p> <p>17 was it Owen? Owen Littman, I guess, Brian</p> <p>18 Seyfried.</p> <p>19 Q. Do you know if they ever entered</p> <p>20 into written trade confirmations with potential</p> <p>21 bankruptcy claim sellers prior to Cowen Special</p> <p>22 Investments sending a trade confirmation to</p> <p>23 Whitebox with respect to the purchase and sale</p> <p>24 of q bankruptcy claim?</p> <p>25 A. This specific bankruptcy claim or in</p>	<p>1 B. Schwab</p> <p>2 general?</p> <p>3 Q. In general.</p> <p>4 A. The answer is I would assume yes, we</p> <p>5 entered into trade confirms.</p> <p>6 Q. Do you recall approximately how many</p> <p>7 bankruptcy claim trades Cowen Special</p> <p>8 Investments entered into with Whitebox in 2016?</p> <p>9 A. No.</p> <p>10 Q. Was it more than ten?</p> <p>11 A. I have no idea.</p> <p>12 Q. Do you recall approximately how many</p> <p>13 bankruptcy claim trades Cowen Special</p> <p>14 Investments did with Whitebox Advisors in 2017?</p> <p>15 A. No.</p> <p>16 Q. Was it more than ten?</p> <p>17 A. I don't know. I don't remember. I</p> <p>18 doubt it, but I don't know.</p> <p>19 Q. Did Cowen Special Investments --</p> <p>20 strike that.</p> <p>21 Do you recall having sent the e-mail</p> <p>22 at the top of Exhibit 91 time stamped</p> <p>23 10:09 a.m.?</p> <p>24 A. I don't remember sending it, no.</p> <p>25 Q. Standing here -- sitting here today,</p>



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<p>1 B. Schwab</p> <p>2 why do you think you wrote Whitebox purchase</p> <p>3 always subject to execution of trade confirm</p> <p>4 with upstream?</p> <p>5 A. Our standard documentation, which I</p> <p>6 don't know what was communicated to Whitebox</p> <p>7 other than now seeing the e-mail, is subject to</p> <p>8 completing -- a downstream transaction is</p> <p>9 subject to successfully closing an upstream.</p> <p>10 That's standard in our documentation.</p> <p>11 Q. And just to make the record clear,</p> <p>12 what do you mean by downstream and upstream?</p> <p>13 A. Upstream would be the original</p> <p>14 holder or the seller to Cowen, and then Cowen</p> <p>15 to a buyer would be the downstream.</p> <p>16 Q. Do you know why transactions with</p> <p>17 Whitebox are subject to execution of a</p> <p>18 transaction with upstream?</p> <p>19 MS. LEWIS-GRUSS: Objection.</p> <p>20 A. To the best of my recollection, most</p> <p>21 transactions are subject to that, if not all.</p> <p>22 Q. As head of Cowen Special</p> <p>23 Investments, did you require that transactions</p> <p>24 with Whitebox be subject to execution of a</p> <p>25 transaction with upstream?</p>	<p>1 B. Schwab</p> <p>2 A. I don't recall ever making any</p> <p>3 specific anything to Whitebox.</p> <p>4 Q. Is the purpose of making any</p> <p>5 transaction subject to execution of a deal with</p> <p>6 upstream to protect Cowen? Strike that.</p> <p>7 What is the purpose of making any</p> <p>8 sale to Whitebox subject to execution of a</p> <p>9 transaction with upstream?</p> <p>10 A. To manage a mismatch in terms of</p> <p>11 having a buyer but not having a seller, and</p> <p>12 that's not Whitebox specific, that's in</p> <p>13 general.</p> <p>14 Q. What do you mean by "mismatch"?</p> <p>15 A. That you have a buyer but not have a</p> <p>16 seller or vice versa.</p> <p>17 Q. What would happen if you had a buyer</p> <p>18 but not a seller in the absence of this</p> <p>19 condition?</p> <p>20 MR. BALBER: Object to the form of</p> <p>21 the question.</p> <p>22 A. You don't -- I mean, to close a</p> <p>23 transaction you don't necessarily need a trade</p> <p>24 confirm executed on the upstream to get a</p> <p>25 transaction closed, right, so, I mean, you can</p>
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<p>1 B. Schwab</p> <p>2 e-mail, you can skip trade confirms, go</p> <p>3 straight to documentation. It can take any</p> <p>4 number of different mechanics.</p> <p>5 Q. In the absence of this condition,</p> <p>6 would Cowen have legal exposure to Whitebox?</p> <p>7 MR. BALBER: Object -- finish the</p> <p>8 question. Sorry.</p> <p>9 MR. CHUBAK: Withdrawn.</p> <p>10 Mark this 92.</p> <p>11 (Exhibit 92, Assignment and Release</p> <p>12 Agreement, Bates stamped WBA-0000145</p> <p>13 through WBA-0000157, marked for</p> <p>14 identification.)</p> <p>15 Q. Do you recognize this agreement?</p> <p>16 A. No.</p> <p>17 Q. Sitting here today, do you have any</p> <p>18 idea why your name is listed underneath the</p> <p>19 part marked "Seller"?</p> <p>20 A. No, other than that's just a</p> <p>21 correspondence that was on all the standard</p> <p>22 documents, point of contact.</p> <p>23 Q. Did you ever discuss with Brian</p> <p>24 Seyfried -- withdrawn.</p> <p>25 Do you recall ever having discussed</p>	<p>1 B. Schwab</p> <p>2 with Brian Seyfried selling whatever interest</p> <p>3 Cowen Special Investments had in Earl of</p> <p>4 Sandwich's Caesars claim to Whitebox?</p> <p>5 A. No.</p> <p>6 MR. CHUBAK: Let's take a short</p> <p>7 break.</p> <p>8 (Recess was taken from 10:53 to</p> <p>9 11:01.)</p> <p>10 BY MR. CHUBAK:</p> <p>11 Q. Do you recall having spoken with</p> <p>12 anyone at Cowen Special Investments' parent</p> <p>13 company or companies about the Earl trade</p> <p>14 following January 2017?</p> <p>15 MR. BALBER: And I am going to</p> <p>16 caution you, if any conversations were in</p> <p>17 the presence of either internal counsel or</p> <p>18 external counsel, you are instructed not to</p> <p>19 answer.</p> <p>20 A. Not that I recall, other than -- I</p> <p>21 wasn't involved in anything, so just getting</p> <p>22 updates.</p> <p>23 Q. Did you ever speak with Brian</p> <p>24 Seyfried about the Earl claim?</p> <p>25 A. Not that I -- I mean, I would assume</p>

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<p>1 B. Schwab 2 so, but not that I recall specifically, no. 3 Q. Without telling me anything 4 privileged, did you ever speak with Owen 5 Littman about the Earl claim? 6 MR. BALBER: You are instructed not 7 to answer. 8 MR. CHUBAK: I am not asking -- 9 MR. BALBER: You are instructed not 10 to answer. 11 Next question. 12 MR. CHUBAK: I am not asking about 13 any privileged communication. I am just 14 asking if he spoke with him. 15 MR. BALBER: Just move on. You are 16 wasting everybody's time at a ridiculous 17 rate. Move on. Next question. I am not 18 letting him answer a question about his 19 conversation with the general counsel of 20 the company. It's just not happening. 21 Next question. 22 MR. CHUBAK: I am not asking about a 23 privileged communication. I am asking if 24 he spoke with him. 25 MR. BALBER: Good. Next question.</p>	<p>1 B. Schwab 2 Q. You testified a moment ago that you 3 weren't involved with anything concerning the 4 Earl claim, just getting updates. 5 What do you mean by just getting 6 updates? 7 A. Meaning that I was aware that there 8 were conversations going on between Whitebox 9 and Cowen that I wasn't party to and just being 10 told periodically. 11 Q. Did you speak with Jillian Bottge 12 about the status of the Earl trade following 13 January 2017? 14 A. Not that I remember. 15 Q. What were the conversations that you 16 were getting updates on? 17 A. That I know there was an ongoing 18 conversation between Whitebox and Cowen and 19 that was the essence of it. I don't know what 20 was progressing. 21 Q. Who were you getting updates from? 22 A. Brian Seyfried and Danny 23 periodically. 24 Q. What did Brian tell you in 25 connection with those updates?</p>
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<p>1 B. Schwab 2 MR. BALBER: Anything he told you in 3 which either internal or outside counsel 4 was privy, you are instructed not to 5 answer. 6 A. Other than that it was an ongoing 7 conversation, that's it. 8 Q. What was the conversation? 9 A. That there was an ongoing 10 conversation between Whitebox and Cowen. The 11 specifics, no, I wasn't privy to any of the 12 specifics of the conversations. 13 MR. CHUBAK: We are done. 14 MR. BALBER: Great. 15 EXAMINATION BY 16 MS. LEWIS-GRUSS: 17 Q. Mr. Schwab, if you could take out 18 the document previously marked as Exhibit 82, I 19 would appreciate that. 20 Do you have that document in front 21 of you? 22 A. I do. 23 Q. Can you turn to the page that's 24 stamped at the bottom 106, and at the bottom of 25 the page there is an e-mail from Mr. Avallone</p>	<p>1 B. Schwab 2 to Mr. Mikelberg dated January 11 at 12:59 p.m. 3 Do you see that? 4 A. Yes. 5 Q. And this e-mail was forwarded to you 6 by Mr. Mikelberg; is that correct? 7 A. Correct. 8 Q. When you received this e-mail from 9 Mr. Mikelberg, did you understand that 10 Mr. Avallone was offering a Caesars claim for 11 sale at the -- for \$2.15 million cash? 12 MR. CHUBAK: Objection. Calls for a 13 legal conclusion. 14 A. My understanding that the seller was 15 willing to engage into a conversation at 16 approximately those terms and conditions. 17 Q. And as you testified, Mr. Mikelberg 18 forwarded to you, and you then responded on the 19 same day at 1:59 p.m.; is that correct? 20 A. According to the e-mails, correct. 21 Q. And the e-mail at the top of this 22 page appears to be an e-mail that you sent to 23 Mr. Avallone at 1:59 p.m. on January 11, 2017; 24 is that correct? 25 A. So it appears.</p>

1 B. Schwab  
2 Q. Do you have any reason to think you  
3 didn't send it?  
4 A. No.  
5 Q. And you asked in this e-mail  
6 Mr. Avallone if he was offering the paper for  
7 sale at \$2.15 million or approximately  
8 59.72 percent of the face claim amount; is that  
9 correct?  
10 A. Yes.  
11 Q. How would you classify that  
12 statement?  
13 MR. CHUBAK: Objection to the form  
14 of the question. Calls for a legal  
15 conclusion.  
16 A. That he was interested in entering  
17 into a transaction based on those terms.  
18 Q. And you asked him if he had any  
19 flexibility; is that true?  
20 A. Correct, that's what the e-mail  
21 says.  
22 Q. Mr. Avallone then responded to you  
23 that same day at 2:04 p.m.; is that correct?  
24 A. Yes, it appears to be.  
25 Q. And Mr. Avallone said that you had

1 B. Schwab  
2 asked him if he was offering the paper for sale  
3 at 2.15 million or approximately 59.72 percent  
4 of the face claim amount and he said "yes." Do  
5 you see that?  
6 A. Back on -- just for my  
7 clarification, on the -- at the 1:59 p.m.  
8 e-mail?  
9 Q. So at 2:04 Mr. Avallone says "see  
10 below."  
11 A. Yes.  
12 Q. Right?  
13 A. Yes.  
14 Q. And so the word "yes" is  
15 capitalized.  
16 Do you, as you sit here today,  
17 understand that to be Mr. Avallone's response  
18 to your question?  
19 A. Correct.  
20 Q. And the "no" that's capitalized was  
21 also a response to your question?  
22 A. Correct.  
23 Q. So in response to your question  
24 about whether he was offering the paper for  
25 sale at \$2.15 million or approximately

1 B. Schwab  
2 59.72 percent of the face claim amount, did you  
3 understand Mr. Avallone's "yes" to mean that he  
4 was agreeing to sell -- he was offering to sell  
5 the paper, the Earl of Sandwich claim, at the  
6 price listed in your e-mail?  
7 A. Correct.  
8 MR. CHUBAK: Objection to the form  
9 of the question.  
10 Q. And so for clarity, as you sit here  
11 today, do you consider Mr. Avallone's "yes" an  
12 offer to sell the Earl of Sandwich claim?  
13 MR. CHUBAK: Objection. Calls for a  
14 legal conclusion. I also object to the  
15 form of the question.  
16 A. It would be my understanding that he  
17 would engage into a transaction based on those  
18 terms and conditions, subject to.  
19 Q. And that was your understanding when  
20 you received the e-mail on January 12th?  
21 A. Correct.  
22 Q. And then if you turn back to page  
23 105, on the same day January 11th at 2:17 p.m.  
24 you said "I would have interest at 59.72%  
25 subject to confirming the above."

1 B. Schwab  
2 Did you consider that to be an  
3 offer?  
4 MR. CHUBAK: Objection to the form  
5 of the question. Calls for a legal  
6 conclusion.  
7 A. That, again, that we had a basic  
8 understanding of an outline of a potential  
9 transaction.  
10 Q. And what were the terms of that  
11 basic understanding?  
12 A. 59.72 percent or approximately, you  
13 know, \$2.15 million.  
14 Q. And in your business when you reach  
15 an agreement, do you refer to price and amount,  
16 is that a phrase you use?  
17 A. Yeah, or a notional. It would be a  
18 face amount.  
19 Q. I want to make sure we are using the  
20 same terms. So the term amount, is that -- do  
21 you mean price or do you mean what you are  
22 actually buying?  
23 A. Notional being -- or face being the  
24 face value of the claim, 4 million odd, right,  
25 purchase price being a dollar amount, and a

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1 B. Schwab  
2 purchase price percentage being the actual  
3 59.72 percent.  
4 Q. And then Mr. Avallone on January  
5 11th at 2:38 says he can easily get a letter  
6 confirming the nature of the claim. Do you see  
7 that?  
8 A. Yes.  
9 Q. As you sit here today, do you have  
10 any recollection of what you understood  
11 Mr. Avallone to be telling you at the time he  
12 sent you this e-mail?  
13 A. It would be -- the request would  
14 have been for confirmatory due diligence.  
15 Q. And you then send Mr. Avallone an  
16 e-mail in response at 3:47 p.m.; is that  
17 correct?  
18 A. Correct.  
19 Q. And that is where you state that you  
20 would be a buyer of the 3.6 million allowed CZR  
21 claim at 2.15 million or 59.72 percent of the  
22 allowed face; is that correct?  
23 A. Correct.  
24 Q. And did you consider that to be an  
25 offer to purchase the claim at the terms first

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1 B. Schwab  
2 set by Mr. Avallone?  
3 MR. CHUBAK: Objection to the form  
4 of the question. Calls for a legal  
5 conclusion.  
6 A. An understanding that -- a basic  
7 outline of a transaction, that's would  
8 that would -- and it would progress from there.  
9 Q. You testified earlier that this  
10 e-mail includes conditions at the buyer's  
11 discretion.  
12 What does that mean when you use the  
13 phrase "buyer's discretion"?  
14 A. That Cowen, you know, subject to due  
15 diligence, at Cowen's own discretion or  
16 eventually -- or buyer on the back end, the  
17 downstream parties confirming it is what it is,  
18 it is what we think it is.  
19 Q. Does buyer's discretion mean that  
20 Cowen could decide whether or not to waive  
21 those conditions?  
22 A. Correct.  
23 MR. CHUBAK: Objection. Calls for a  
24 legal conclusion.  
25 Q. And you also stated it could be the

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1 B. Schwab  
2 buyer on the back end.  
3 Could the buyer on the back end  
4 waive those conditions?  
5 MR. CHUBAK: Objection. Calls for a  
6 legal conclusion.  
7 A. Subject to a conversation we could  
8 work through a process.  
9 Q. And if we go to the first page of  
10 this document, on the morning of January 12 at  
11 8:34 a.m. you sent another e-mail to  
12 Mr. Avallone; is that correct?  
13 A. It appears to be correct.  
14 Q. And you have no reason to think you  
15 didn't send this e-mail?  
16 A. No, correct.  
17 Q. And in this e-mail you accepted  
18 Mr. Avallone's offer; is that correct?  
19 MR. CHUBAK: Objection. Calls for a  
20 legal conclusion.  
21 A. It appears to be, yes.  
22 Q. And you say "my acceptance of your  
23 offer"; isn't that true?  
24 A. Uh-huh. Yes.  
25 Q. And you said your offer was good

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1 B. Schwab  
2 through 11 a.m. eastern time; is that correct?  
3 A. Correct.  
4 Q. And did Mr. Avallone respond prior  
5 to 11 a.m. eastern time?  
6 A. According to the e-mail  
7 correspondence, at 9:47 he said "please forward  
8 draft document."  
9 Q. And that was his acceptance on  
10 January 12th?  
11 MR. CHUBAK: Objection. Calls for a  
12 legal conclusion.  
13 A. It was him requesting a document  
14 based on my prior e-mail.  
15 Q. And you understood at the time you  
16 received his e-mail that he was accepting your  
17 offer?  
18 MR. CHUBAK: Objection. Calls for a  
19 legal conclusion.  
20 A. My understanding -- I mean, I can't  
21 tell you -- at the point in time it was more  
22 the it would progress forward and we would  
23 enter into a conversation.  
24 Q. So was it your understanding at the  
25 time you received Mr. Avallone's e-mail on

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1 B. Schwab  
2 January 12th that Mr. Avallone had agreed to  
3 price and amount regarding the Earl of Sandwich  
4 claim?  
5 A. In concept, yes.  
6 Q. And if Mr. Avallone had not agreed  
7 to price and amount regarding the Earl of  
8 Sandwich claim, would you have asked  
9 Ms. Rosenblum to forward Thomas a document?  
10 A. I would think not. I mean, I'm not  
11 in that time period, but if he requested a  
12 document, I would only ask Gail to send a  
13 document if it was a document requested.  
14 Q. So you testified you had a  
15 conversation with Mr. Avallone sometime on  
16 January 12th.  
17 A. There was a conversation. I don't  
18 know specifically when it was.  
19 Q. And you testified you don't recall  
20 whether or not Mr. Avallone said to you that he  
21 needed approval from any other individual or  
22 party?  
23 A. Correct.  
24 Q. If Mr. Avallone had told you that he  
25 needed approval from somebody else, what would

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1 B. Schwab  
2 you have done?  
3 MR. CHUBAK: Objection. Calls for  
4 speculation.  
5 MR. BALBER: You can answer.  
6 A. I mean, most likely I would have  
7 sent the document anyway and he would have  
8 shared it with whoever he had to internally  
9 share it with to work through a process.  
10 Q. Would you have noted in your e-mail  
11 to him that he had told you that that was a  
12 condition?  
13 MR. CHUBAK: Objection. Calls for  
14 speculation and to the form of the  
15 question.  
16 A. I didn't, so, I mean, probably not.  
17 I mean, I don't know.  
18 Q. Would you have informed  
19 Ms. Rosenblum that there was -- there had been  
20 a request by the counterparty or a statement by  
21 the counterparty that he needed additional  
22 approvals?  
23 MR. CHUBAK: Objection. Calls for  
24 speculation.  
25 A. Apparently, no, and probably not.

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1 B. Schwab  
2 Q. Well, how do you say "apparently,  
3 no" when you don't recall --  
4 A. Well, because I didn't, I didn't in  
5 the e-mail, and I don't remember him ever  
6 telling me that he was, so...  
7 Q. Okay. So I think just so we are  
8 clear, you don't recall one way or the other  
9 whether --  
10 A. Correct.  
11 Q. -- Mr. Avallone ever said he needed  
12 approvals?  
13 A. Correct.  
14 Q. And your e-mails to Gail don't say  
15 please send a draft document, further approvals  
16 are necessary; isn't that true?  
17 A. Correct.  
18 Q. And as you sit here today, you have  
19 no reason to believe that Mr. Avallone ever  
20 told you that he needed approvals from any  
21 other party; isn't that correct?  
22 A. I don't recall.  
23 Q. So once you -- in your normal  
24 practice while you were employed by Cowen, once  
25 a counterparty had agreed to price and quantity

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1 B. Schwab  
2 or price and amount, what were the traditional  
3 steps that Cowen would take?  
4 A. It depended on the type of  
5 transaction. Just depended how the transaction  
6 evolved. In -- you know, it could be anywhere  
7 from go straight to a document, to a trade  
8 confirm and a document. It depended on the  
9 transaction.  
10 (Continued on next page to include  
11 jurat.)  
12  
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1 B. Schwab  
2 Q. What steps, if any, would Cowen take  
3 to secure a buyer for the downstream?  
4 A. It depended. It depends on the  
5 buyer and who the party is. In some cases it  
6 would be a trade confirm. In other cases it  
7 would just be a verbal agreement.  
8 MS. LEWIS-GRUSS: Okay. I think we  
9 are done. Thank you.  
10 MR. BALBER: Thank you.  
11 (Time noted: 11:18i½a.m.)  
12  
13  
14

15 -----  
16 BRADLY SCHWAB

17 Subscribed and sworn to before me  
18 this day of 2018.  
19  
20 -----  
21  
22  
23  
24  
25

1  
2 CERTIFICATE  
3

4 STATE OF NEW YORK )  
5 ) ss.:  
6 COUNTY OF NASSAU )  
7

8 I, KRISTIN KOCH, a Notary Public  
9 within and for the State of New York, do  
10 hereby certify:

11 That BRADLY SCHWAB, the witness whose  
12 deposition is hereinbefore set forth, was  
13 duly sworn by me and that such deposition  
14 is a true record of the testimony given by  
15 such witness.

16 I further certify that I am not  
17 related to any of the parties to this  
18 action by blood or marriage; and that I am  
19 in no way interested in the outcome of this  
20 matter.

21 IN WITNESS WHEREOF, I have hereunto  
22 set my hand this 19th day of January, 2018.  
23

24 -----  
25 KRISTIN KOCH, RPR, RMR, CRR, CLR

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